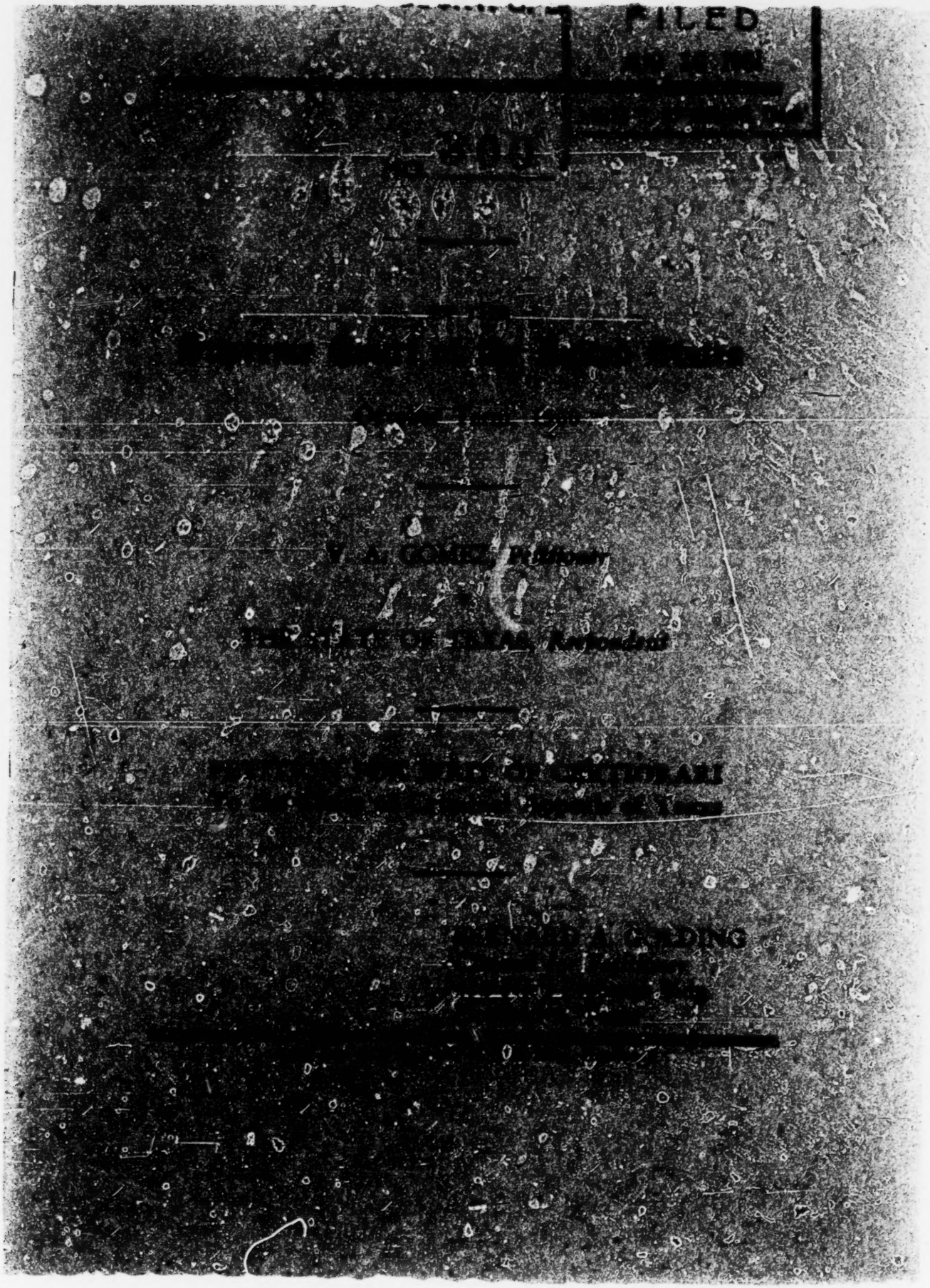

SUBJECT INDEX

	PAGE
SUMMARY STATEMENT OF MATTER INVOLVED	1
BASIS FOR AND STATEMENT OF THE JURISDICTION OF THE SUPREME COURT	5
QUESTIONS PRESENTED	6
REASONS FOR ALLOWANCE OF THE WRIT	7
The right to assistance of counsel of Petitioner's own choice is protected by the Due Process Clause of the Fourteenth Amendment	8
The right to assistance of counsel of one's own choice —under Texas law	11
The right to assistance of counsel of Petitioner's own Choosing was not waived by an intelligent and competent waiver	14
CONCLUSION	21
APPENDIX A	22
APPENDIX B	24

LIST OF AUTHORITIES

CASES

Brown v. Mississippi, 297 U.S. 278 ..... 6, 8
Daugherty v. State, 26 S.W. 60 12
Dimick v. Schiedt, 293 U.S. 474 14
Ex Parte Mays, 212 S.W.2d 164 13
Ex Parte Richard Quirin, 317 U.S. 1 15
Johnson v. Zerbst, 304 U.S. 458 ..... 6, 9, 16, 17, 18, 19
Glasser v. United States, 315 U.S. 60 ..... 15, 16
Ohio Bell Telephone Co. v. Public Utilities Commission, 301
301 U.S. 292, 307 ..... 6, 14
Parham v. Texas, 222 S.W. 561 13
Patton v. United States, 281 U.S. 276 ..... 6, 14
Powell v. Alabama, 287 U.S. 45 ..... 6, 8, 17, 18, 19, 20
Quicksall v. People of State of Michigan, 339 U.S. 660 13
Slocum v. New York Life Ins. Co., 228 U.S. 364 14
Twining v. New Jersey, 211 U.S. 78, 79 8

CONSTITUTION OF THE UNITED STATES

Fourteenth Amendment 5, 6, 7, 9, 10, 11, 14, 16

UNITED STATES STATUTES

28 U.S.C. 1257(2)(3) 5

CONSTITUTION OF TEXAS

Article I, Section 10 11
Article I, Section 19 11

TEXAS CODE OF CRIMINAL PROCEDURE

Article 494 ..... 8, 19, 20

NO._____

IN THE

Supreme Court of the United States

October Term, 1960

V. A. GOMEZ, *Petitioner*

v.

THE STATE OF TEXAS, *Respondent*

PETITION FOR WRIT OF CERTIORARI
To the Court of Criminal Appeals of Teaxs

To the Hon. Chief Justice of the United States and the Hon. Associate Justices of the Supreme Court of The United States:

Petitioner, V. A. GOMEZ, respectfully shows:

Summary Statement of Matter Involved

Petitioner was convicted of the felony offense of receiving and concealing stolen property (Tr. 36, Verdict and p. 44, Sentence) and his punishment fixed at seven years confinement (Tr. 36).[1]

1 This refers to the transcript containing the pleadings in this cause.

The indictment was presented and filed on July 29, 1960, alleging the date of the offense as March 22, 1957 (Tr. 2, 3), with the allegation that Petitioner was "absent from the State of Texas, for a period of time exceeding six months subsequent to March 22, 1957, and anterior to the presentment of this indictment," thus seeking to avoid the bar of the Statute of Limitations.

Under date of November 1, 1960, by letter, Bernard A. Golding, Attorney at Law of Houston, Texas, advised the District Clerk that he, as sole counsel, represented Petitioner (Tr. 4).

This case was set for trial for December 5, 1960.

On that date, Petitioner made, verified and filed his first application for a continuance of his case, based on the absence of his attorney, Bernard A. Golding (Tr. 17), which was verified before the District Clerk of Howard County, Texas, and duly signed by Petitioner in person.

There is also here, another First Application for a continuance, dated and verified November 28, 1960, signed by Bernard A. Golding and verified before Madaline C. Lloyd, a Notary Public of New York County, New York, in which it is set forth that Mr. Golding was then engaged in the trial of a narcotics conspiracy trial in the Federal Court in New York, in which said attorney set forth that he was so engaged in said trial in Federal Court in New York and at that time the Government estimated that ten weeks would be consumed in the trial from the prosecution's standpoint. (Tr. 5)

The facts as to Mr. Golding's engagement in the trial in New York are further verified by the presiding Judge of the United States Court in New York (Tr. 7) by letter from said Judge.

There is no question that the motion of Petitioner for a continuance was his *first* motion.

The Court overruled Petitioner's motion for a continuance (M. 39-41)[2] and appointed Mr. W. H. Eyssen, Jr. (M. 40) to represent Petitioner on this trial. Petitioner refused to accept the attorney appointed by the Court for the reason that Petitioner had previously engaged and retained counsel to represent him in this cause. (M. 41-42)

Exactly the theory upon which Petitioner's first motion for a continuance on account of absence of his sole counsel was by the Court overruled is difficult to comprehend, since several grounds of objection were interposed by the District Attorney, (Tr. 8-14) embracing several different theories.

A. The District Attorney thought that either one or more of several lawyers who had talked to him about the case were representing Petitioner;

B. Since the date of the alleged offense was more than three years before the trial date, that as the District Attorney expressed it:

> "Particularly in view of the fact that this Defendant obtained for himself a three-year continuance by being a fugitive and keeping himself outside the continental limits of the United States. . ." (Tr. 12, State's answer to motion for continuance).

Just how Petitioner could have "obtained for himself a three-year continuance" of a case that did not exist until some four months before this continuance was sought is somewhat difficult to comprehend.

C. The District Attorney seemed to think that because Petitioner had appeared in a couple of civil cases

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[2] "M" refers to the volume containing the motions before the Trial Court.

in Howard County, during September, 1960, and November, 1960, that such fact should in some manner be utilized to defeat Petitioner's first application for a continuance of this criminal case.

D. The District Attorney invokes another strange doctrine of theory, i.e., that because Petitioner's sole attorney, Bernard A. Golding, had a case in Federal Court in New York which might or could be called before this case would be called, that Mr. Golding should not have accepted the case in the Federal Court in New York, or if he had that case first, he should not have accepted Petitioner's case.

It would be a strange doctrine to say that an attorney should not ever have on hand more than one case at a time, or that Petitioner's counsel was required to neglect the business of clients by whom he had been previously retained, in this instance, the conspiracy case in the United States District Court, Southern District of New York.

It was definitely established that ever since a day or two after Labor Day, 1960, Mr. Golding had been Petitioner's sole counsel. (Tr. 15, affidavit of Petitioner)

The Court-appointed attorney, by motion (Tr. 21) sought a period of ten days from December 5, 1960, the date of his appointment—in which to prepare the case and properly defend Petitioner, as provided in Article 494 of the Code of Criminal Procedure, State of Texas. Said article provides as follows:

> "Whenever it is made known to the Court at an arraignment or any other time that an accused charged with a felony is too poor to employ a counsel, the court shall appoint one (1) or more practicing attorneys to defend him.
>
> "The counsel so appointed shall have ten (10) days to prepare for trial, unless such time be waived in writing by said attorneys and the accused."

The motion seeking ten days in which to properly prepare defenses was summarily overruled and Petitioner put to trial.

In that state of the record, the Court refused a continuance (or he could have granted a postponement instead) and in that we think the Court erred, and that a reversal should result.

This, because where a Court appoints an attorney, and then starts the trial immediately, without allowing any time at all for preparation, the substance of the right to counsel has been denied.

Basis For And Statement of The Jurisdiction of The Supreme Court

The Supreme Court has jurisdiction to grant a Writ of Certiorari in this cause under the provisions of 28 USC, Section 1257 (2), (3), by virtue of Petitioner's claim, among other things, that in the Texas Courts he was deprived of due process of law, and of the rights and privileges attendant to due process in contravention of the Fourteenth Amendment of the United States Constitution.

The judgment of the Court of Criminal Appeals was entered on May 3, 1961 (Appendix "A") and rehearing was denied on June 14, 1961 (Appendix "B"). The opinion appears in 346 S.W. 2d 847.

Petitioner contends that his constitutional rights and liberty under the Federal Constitution have been violated by the refusal of the Court of Criminal Appeals of Texas to set aside the judgment of the Trial Court, particularly the Petitioner's right to the protection of his rights and liberties under the Fourteenth Amendment to the Federal Constitution.